

DOCKET SECTION

PRESIDING OFFICER'S
RULING NO. R97-1/41

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268

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Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULINGS ON
OCA MOTIONS TO COMPEL RESPONSES TO
CEM-RELATED INTERROGATORIES AND IDENTIFICATION OF WITNESS

(October 7, 1997)

These rulings address a discovery dispute arising out of the interest of the Office of the Consumer Advocate (OCA) in having the Postal Service address, during its direct case, issues related to a past — and potential — OCA proposal for a Courtesy Envelope Mail (CEM) rate, and the Service's contention that the OCA's position is premature or otherwise inappropriate.¹ The dispute covers three areas: compelled answers to interrogatories to which the Postal Service has lodged formal objections; further answers to interrogatories to which the Service and witness Fronk have provided

¹ Courtesy envelopes are preprinted, self-addressed envelopes some businesses and organizations provide to their customers or correspondents for return, at the customers' expense, at the full (undiscounted) First-Class Mail rate. In Docket No. MC95-1, OCA submitted a proposal, referred to as CEM, that entailed a discounted rate of 20 cents for qualifying courtesy reply envelopes. The Commission, viewing the proposal as a step toward enabling single-piece mailers of First-Class Mail to benefit from the Service's automation program, recommended a CEM category as a mail classification concept for the Governors' consideration, but left determination of a specific discount to a future proceeding. The Governors rejected the Commission's proposal.

allegedly non-responsive answers; and compelled identification of a witness to address CEM-related issues at this stage of the proceeding.²

OCA's request for compelled responses to interrogatories to which the Service has filed an objection (OCA/USPS-T32-137 and 138). These interrogatories ask whether a CEM option — at a rate identical to that the Service has proposed in this case for Prepaid Reply Mail (PRM) and Qualified Business Reply Mail (QBRM) — would be unworkable or inconsistent with the Service's general objectives and policies. The Service objects to providing answers to these questions on grounds that there is no live CEM proposal to which it can respond, nor one it should be required to anticipate, at this stage of Docket No. R97-1. Postal Service Objection at 1. The Service also says it should not have to declare its position on an intervenor proposal before it is formally proposed and before it has had an opportunity to examine it in this proceeding. *Id.* at 2.

OCA asks that this objection be disregarded, since the Service, as a matter of practice, often addresses alternatives that have not been formally proposed, and because the Service has "put the issue of CEM's merits onto the table for discussion." OCA Filing at 2-3 and at 10-12. The Service's Reply, among other things, acknowledges that it sometimes addresses alternatives to its proposals, but maintains in this case that it has not analyzed CEM since Docket No. MC95-1, and did not find it necessary to do so in designing PRM. Reply at 4.

² See OCA Motion to Compel Responses to Interrogatories of Postal Service Witness Fronk (OCA/USPS-T32-137-138); OCA Motion to Compel Responses to Interrogatories to Postal Service Witness Fronk (OCA/USPS-T32-127, 12, 133, 135); [OCA] Motion to Compel Response to Interrogatory to Postal Service (OCA/USPS-T32-130), [OCA] Motion for Expedited Ruling, and [OCA] Motion to Require Postal Service to Identify Witness to Respond to Cross-examination. These motions, submitted September 26, 1997, are collectively referred to and cited in this ruling as "OCA Filing." See also Objection of the Postal Service to OCA Interrogatories T32-137 and T32-138 (September 24, 1997) and Reply of the United States Postal Service to Motions Filed by the OCA Seeking to have the Postal Service Rebut a Courtesy Envelope Mail Proposal It [the OCA] Likely Will Propose (September 30, 1997).

Given its past efforts to develop a reply mail option that would enable single-piece mailers to share more directly in the benefits of the Service's automation program, OCA's interest in pursuing this interest at the earliest stage possible in this proceeding is understandable. This is especially the case here, given the Service's position that it has found no need to analyze CEM and the clear indication that it has limited its efforts to pursuing, through its PRM proposal, a traditional avenue for rewarding automation-related worksharing efforts. It also appears, as the OCA suggests, that it might be useful and more efficient in the long run, if the Service would address some of the OCA's concerns at this time. At the same time, a fair reading of witness Fronk's testimony makes it clear that he has not placed CEM in issue simply through reference to "adverse consequences" or through the inclusion of other limited remarks. Although Fronk clearly has some familiarity with various aspects of that proposal and the Service's position is seemingly clear, I do not find that this awareness, or the possibility that one or more other witnesses may be familiar with CEM, calls for compelled responses to these interrogatories.

OCA's request for further responses to Nos. 127, 132, 133 and 135. OCA acknowledges that witness Fronk and the Service have provided answers to these interrogatories, but contends the answers are so evasive or so contradictory (with respect to other testimony provided by Fronk and witness Miller) that they should be deemed non-responsive.

One of the answers in this group is witness Fronk's statement, in response to interrogatory No. 127's inquiry into householders' potential behavior in response to a CEM offering, that he has not studied CEM and that he has assumed the infeasibility of differently-rated stamps in developing his PRM proposal. Fronk cites this response as his answer to interrogatory Nos. 132(b), 133 and 135, which ask, respectively, for his opinion about several matters concerning business participation in, or assessment of, CEM's consistency with the Service's automation goals, and whether CEM (at 30 cents) would improve allocative efficiency. In response to interrogatory No. 132(a), which

asked whether the Service has any information about PRM and QBRM users' potential participation in CEM, Fronk states that the Service has none.

As noted in connection with Nos. 137 and 138, OCA's dissatisfaction with witness Fronk's insistence that consideration of CEM did not materially enter into his preparation for this case is understandable. However, I find that his responses to Nos. 127, 132(b), 133 and 135 cannot be categorized as so evasive or contradictory as to be deemed non-responsive. Instead, although OCA claims testimony and remarks already offered point to knowledge of CEM — and even "negativity" toward it — the overall context in which this occurs does not give rise to an obligation to provide a further response during this phase of the proceeding. Similarly, it does not appear that witness Fronk's statement, in response to No. 132(a), that the Service has no information on potential CEM participation is either evasive or contradictory.

No. 130. Interrogatory No. 130 asks witness Fronk for the Service's views on the Governors' objections to the OCA's Docket No. MC95-1 CEM proposal and a list of all objections (not already raised elsewhere in this proceeding) the Service would have if an identical proposal were advanced by a party in this proceeding. In response, the Service states that when the objections were published by the Governors in their decision, it found these objections generally consistent with its views of the CEM proposal. It also said it has not analyzed the CEM proposal since then, but would analyze and respond to any such proposals advanced in this docket.

I find the Service's statement that the Governors' objections are generally consistent with its views on CEM suffices as a response to this interrogatory, and will not compel a further response at this time. However, should the OCA renew its previous CEM proposal (or some variation thereon) during the rebuttal stage of this proceeding, I expect the Service or a designated witness to state with particularity a position on the merits of the OCA's proposal.

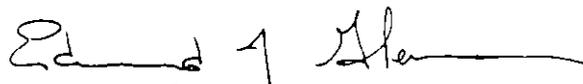
OCA request for identification of a witness to address CEM-related issues. OCA also asks that the Service provide the testimony of witness Alexandrovich on CEM

testimony in this proceeding, based on his appearance as rebuttal witness on CEM in Docket No. MC95-1. OCA Filing at 10 and 14. The Service not only contends that Alexandrovich has had no CEM-related responsibilities since Docket No. MC95-1, but also says that it is the OCA who should produce a witness on this topic (ostensibly during the rebuttal stage of this proceeding). Postal Service Reply at 8.

Based on considerations already addressed in this ruling and the fact that the Commission's schedule allows an opportunity for the OCA to present a witness addressing a CEM option, I will not direct the Service to produce witness Alexandrovich or another witness at this stage of the proceeding. However, should the OCA propose a CEM option, I assume the Service will produce a competent witness to address that alternative.

RULING

1. The OCA's September 26, 1997 Motion for Expedited Ruling is deemed moot.
2. The OCA's September 26, 1997 Motion to Compel Responses from Witness Fronk (OCA/USPS-T32-137-138) is denied.
3. The OCA's September 26, 1997 Motion to Compel [Further] Responses from Witness Fronk (OCA/USPS-T32-127, 132, 133, 135) is denied.
4. The OCA's September 26, 1997 Motion to Compel [Further] Response to Interrogatory to Postal Service (OCA/USPS-T32-130) is denied.
5. The OCA's September 26, 1997 Motion to Require Postal Service to Identify Witness to Respond to Cross-Examination is denied.


Edward J. Gleiman
Presiding Officer